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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/005,702	12/05/2001	Jurgen Heinz Fabian	F7571(V)	7656
201	7590	12/18/2006	EXAMINER	
UNILEVER INTELLECTUAL PROPERTY GROUP			PADEN, CAROLYN A	
700 SYLVAN AVENUE,			ART UNIT	PAPER NUMBER
BLDG C2 SOUTH			1761	
ENGLEWOOD CLIFFS, NJ 07632-3100				

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/18/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/005,702	FABIAN ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Carolyn A. Paden	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### **Status**

1) Responsive to communication(s) filed on 02 October 2006.  
 2a) This action is **FINAL**.      2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### **Disposition of Claims**

4) Claim(s) 1,3,5-8 and 10-16 is/are pending in the application.  
 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,3,5-8 and 10-16 is/are rejected.  
 7) Claim(s) \_\_\_\_\_ is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### **Application Papers**

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### **Attachment(s)**

1) Notice of References Cited (PTO-892)  
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
 3) Information Disclosure Statement(s) (PTO/SB/08)  
 Paper No(s)/Mail Date \_\_\_\_\_

4) Interview Summary (PTO-413)  
 Paper No(s)/Mail Date. \_\_\_\_\_

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 2, 2006 has been entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 5-8 & 10-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over PAJ (10-113145).

This reference was cited as an X reference in an international search report. PAJ discloses treating pan-fried seasoning that is added to a wok or a frying pan to season the foods while heating. The product reduces splashing of fat, oil and moisture during cooking. The composition is an o/w emulsion containing 10-50% fat, 0.03-0.3 wt% emulsifier having an HLB of greater than or equal to 7, a viscosity of 1000-7000 centipoises at

20 C and an average oil drop particle size of less than or equal to 30 um.

The selected emulsifiers include glycerol fatty acid ester, monoglyceride, sorbitan fatty acid ester and enzyme decomposition of lecithin (see abstract). In the machine assisted translation at paragraph 007 of the detailed description, polyglycerol fatty acid ester or sucrose fatty acid ester is a suggested emulsifier, as required in claim 3. 0-10% biopolymer is disclosed as an ingredient in paragraph 0020 of the detailed description.

Claim 1 appears to differ from the reference in the recitation of the specific Bostwick value of the product but the Bostwick value is known in the art to be a measure of how pourable the composition is. Since the composition of PAJ is used as a seasoning for pan-frying or stir-frying, one of ordinary skill in the art would have expected it to be pourable. Although DATEM is not one of the specific emulsifiers used in PAJ, no unobvious or unexpected results are seen from the selection of this specific emulsifier because the emulsifiers in PAJ show the same utility as that described by applicant. It is appreciated that the pH of the composition is not mentioned but the pH range selected is a range typically found in foods. No claim is allowed.

Applicant argues that PAJ uses more than 50 wt% oil or fat in his process and that when the product has more than 50% oil, the food is greasy. This argument has been considered but is not persuasive. No unobvious or unexpected difference is seen from the use of more than 50% oil when compared to 50% oil in the PAJ process. The seasoning in PAJ appears to be added to an oily stir fry pan and so this would be add more oil to the seasoning composition. There is no evidence in the file to show that the added oil in PAJ would substantially alter the emulsion of the claims. Applicant argues that PAJ teaches away from using more than 0.3wt% emulsifier. This is disagreed with because page 5 appears to state just the opposite. Applicant urges that salt is not mentioned in PAJ but since this is for a stir-fried dish, one of ordinary skill in the art would expect that the stir-fry is liberally treated with soy sauce, a rich source of salt. To add or subtract salt from a seasoning product would have been an obvious way to modify the salt to taste. Applicant urges that the reference does not show the advantages of salt and lecithin in anti-spattering. This argument has been considered but is not persuasive because the claims, as written, do not require an anti-spattering feature.

This is a Continued Examination of applicant's earlier Application No. 10/005702. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone

number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Carolyn Paden* 1761  
CAROLYN PADEN  
PRIMARY EXAMINER 12-14-06